

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PROTOCHIPS, INC.,

Plaintiff,

v.

HUMMINGBIRD PRECISION MACHINE
COMPANY A/K/A HUMMINGBIRD
SCIENTIFIC,

Defendant.

Case No.:

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Protochips, Inc. ("Plaintiff" or "Protochips"), by and through counsel, brings this action against Defendant Hummingbird Precision Machine Company a/k/a Hummingbird Scientific ("Defendant" or "Hummingbird") alleging and saying as follows:

I. NATURE OF THE ACTION

1. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 271, *et seq.*, to enjoin and obtain damages for Hummingbird's unauthorized manufacture, use, sale, offer to sell, and/or importation into the United States for subsequent use and sale of infringing sample holders for electron microscopes.

II. PARTIES

2. Plaintiff Protochips is a corporation organized and existing under the laws of Delaware, with its principal place of business in Wake County, North Carolina.

3. Upon information and belief, Defendant Hummingbird is a corporation organized and existing under the laws of the State of Washington, with its registered office and principal place of business located in Thurston County, Washington.

III. JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States, including 35 U.S.C. §§ 271 *et seq.* This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332, and 1338.

5. The Court has personal jurisdiction over Hummingbird because Hummingbird resides and maintains its principal place of business in this judicial district. Upon information and belief, Hummingbird regularly conducts significant business activity in this judicial district, including selling and offering for sale infringing sample holders for electron microscopes.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and 1400(b) because Hummingbird resides in this judicial district, maintains a regular and established place of business in this judicial district, and has committed acts of infringement in this judicial district.

IV. FACTS

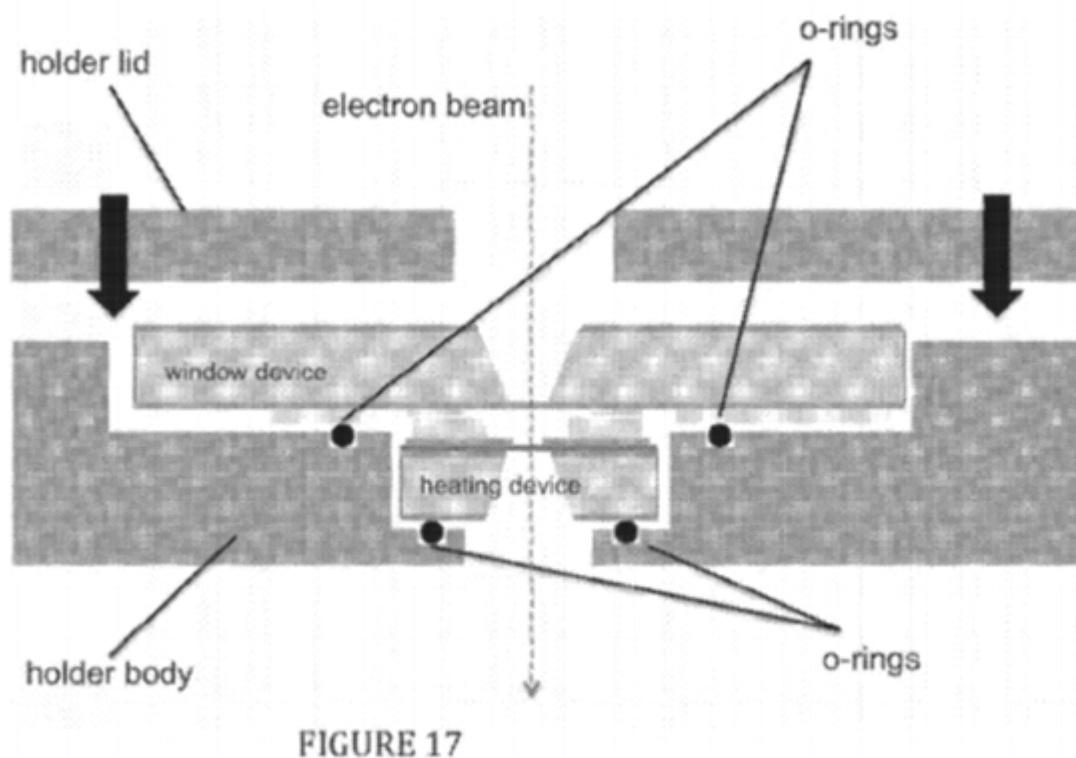
7. Protochips develops innovative tools for scientists to study nanoscale materials. It designs and sells sample holders for electron microscopes that allow users to see reactions take place in liquids and gases in real time. These products have revolutionized *in-situ* microscopy in just the last few years.

8. Recognizing the novelty of Protochips' inventions, the United States Patent and Trademark Office ("PTO") granted to Protochips on May 30, 2017, Patent No. 9,666,409 entitled "Electron Microscope Sample Holder for Forming a Gas or Liquid Cell with Two Semiconductor Devices" ("the '409 Patent").

9. A true and correct copy of the '409 Patent is attached as Exhibit 1.

10. Protochips is the lawful owner of all right, title and interest in the '409 Patent.

11. The '409 Patent describes and claims inventions for using two microelectronic devices with two fluidic seals. One embodiment of the invention is shown in Figure 17 of the '409 Patent:



12. Figure 17 shows a cross-section of a sample holder used to create an "environmental" cell in which fluids are sealed between two microelectronic devices of different sizes with two o-ring seals.

20. Hummingbird, in violation of 35 U.S.C. § 271, makes, uses, sells, offers to sell, and/or imports into the United States for subsequent sale or use sample holders for electron microscopes which infringe claims of the '409 Patent, including the Accused Devices.

21. Hummingbird continues to directly infringe, contribute to the infringement of, and/or actively induce others to infringe claims of the '409 Patent.

22. Hummingbird's sale of the Accused Devices over the last two years have caused Protochips to lose revenue and market share.

23. Unless enjoined by the Court, Hummingbird's continuing infringement of the '409 Patent will cause irreparable injury to Protochips, including loss of market share, loss of business opportunity, damage to goodwill and injury to Protochips' reputation.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff Protochips respectfully prays to the Court for the following relief:

1. That the Court enter judgment against Hummingbird for infringement of the '409 Patent.

2. That the Court issue preliminary and permanent injunctions enjoining Hummingbird and its parents, subsidiaries, affiliates, successors and assigns, and each of their respective officers, directors, agents, servants employees, attorneys, and all persons within their control from making, using, selling, offering to sell, importing, or advertising sample holders for electron microscopes that infringe the '409 Patent;

3. That the Court order an accounting to determine the damages to be awarded to Protochips as a result of Hummingbird's infringement;

BROOKS PIERCE

By: /s/ Darrell A. Fruth

By: /s/ David Sar

Darrell A. Fruth (Application for Admission
pro hac vice forthcoming)

David Sar (Application for Admission *pro hac*
vice forthcoming)

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Attorneys for Plaintiff Protochips, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on August 10, 2017, I caused the foregoing to be:

☒ electronically filed with the Clerk of the Court using the CM/ECF system.

/s/ Shannon M. Jost

Shannon M. Jost (WSBA #32511)

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